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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,584	01/18/2002	Parimal Vadhar	D-43489-01 US	9718

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,584

Applicant(s)

VADHAR ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-10, 16-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date June 16, 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. The Amendment filed June 28,2004 has been entered. Claims 1-5 and 11-15 have been canceled. Claims 21 and 22 have been added. Claims 6-10,16-22 remain pending in the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6-9,16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Pockat et al. (US 5023121) as evidenced by Genske et al. (US 5407751).

4. Pockat et al. teach placing a food product on a bottom web that may include 60-90% EVA and 10% PP and sealing a top web with an ethylene/alpha-olefin copolymer, such as LDPE and LLDPE, and an oxygen barrier such as nylon (i.e. polyamide) as recited in claims 9 and 19, to the bottom web that is attached to a support member in such as nylon (or polyamide) as recited in claim 7 and 17 and an oxygen barrier layer such as EVOH as recited in claim 8 and 18, and drawing a vacuum to form a vacuum skin package that provides an easy peel seal (Column3, line 49 to Column 3, line 28,Column 5, line 5 to column 6,line 22, the top web layers are defined in Column 7, lines 64-68 and Claim 2, the support layer is defined in Table 1, claim 1 and shown in Figure 4). All of these materials are microwaveable, as recited in claims 6 and 16,

evidenced by Genske et al. who also teach easy peel lidstock for microwaveable structures (Abstract, Column 2, lines 48-57, Coplumn 4, line 20 to Column 6, line 61)

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 4925684) in view of Fisher et al. (US 4911938). See the reasons stated in the Office Action mailed March 29, 2004. Amended claim 6 now recites "vacuum skin" package in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 4925684) in view of Fisher et al. (US 4911938), as applied to claims 6-9 above, further in view of Sugimoto (JP 2001-310443). See the reasons stated in the Office Action mailed March 29, 2004.

8. Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751) as applied to claims 6-9, 16-19, further in view of Shibata et al. (US 4429079)

9. Pockat et al. teach the top web with a sealant layer comprising ethylene/alpha olefin copolymer, such as LDPE, and an outer gas-barrier layer of polyamide, but are silent in teaching ethylene/octene-1 polymer. Shibata et al. also teaches adhesive layers compatible with polyamides for food packages, but teaches some low density polyethylenes have shown various problems such as a very narrow seal temperature range, poor seal strength, and poor flexural resistance. Shibata et al. teach a preferred ethylene/alpha olefin copolymer comprises ethylene/octene-1 copolymer because it does not show the problems encountered with conventional low density polyethylenes (Column 1, line 15 to Column 2, line 20). Therefore, it would have been obvious to modify Pockat et al. and include ethylene/octene-1 polymer since Shibata et al. teach ethylene/octene-1 copolymer overcomes the problems with sealing and flexural properties of conventional low density ethylene/alpha olefin copolymers.

10. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751) as applied to claims 6-9, 16-19, further in view of

11. Pockat et al. teach the package comprises sausages, but are silent in teaching whether or not they are cooked sausages. However, examiner takes official notice that it notoriously well known that sausages may be found in either raw or cooked form,

depending on the intended preparation time and preparation method required by the consumer. Therefore to modify Pockat et al. and include "cooked" sausage would have been obvious, since providing either a cooked or raw sausage in package would depend on the intended preparation time and preparation method required by the consumer.

Response to Arguments

12. Applicant's arguments, filed June 28, 2004, with respect to the rejections of claims 6-10 under 35 USC 103(a) as being unpatentable over unpatentable over Sugimoto (JP 2001-310443) in view of Simon (US 4925684), claims 16, 17, 19, 20 under 35 USC 103(a) as being unpatentable over unpatentable over Sugimoto (JP 2001-310443) in view of Campbell (US EP0334670) and claim 18 under 35 USC 103(a) as being unpatentable over unpatentable over Sugimoto (JP 2001-310443) in view of Campbell (US EP0334670), further in view of applied to claims 6-9 above, further in view of Simon (US 4925684) have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.

13. Applicant's arguments, filed June 28, 2004, with respect to the rejections of Claims 6-9 under 35 U.S.C. 103(a) as being unpatentable over Simon (US 4925684) in view of Fisher et al. (US 4911938) and Claim 10 under 35 U.S.C. 103(a) as being unpatentable over Simon (US 4925684) in view of Fisher et al. (US 4911938), further in view of Sugimoto (JP 2001-310443), have been fully considered but are not persuasive.

The rejections stand as stated above. The amended includes "vacuum skin" in the preamble of claim 6, but does not provide any limitation directed to a vacuum skin package. Thus, "vacuum skin" has not been given patentable weight. A preamble is generally not accorded any patentable weight where it merely recites the intended *use* of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the structural limitations are able to stand-alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).


Conclusion


14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.
17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761




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